Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

No. 80-628

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

COWLES COMMUNICATIONS, INC.,

Petitioner,

vs.

JOSEPH L. ALIOTO,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

MOTION TO DEFER CONSIDERATION OF PETITION FOR WRIT OF CERTIORARI

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Petitioner hereby respectfully moves that the Court defer consideration of the Petition for Writ of Certiorari for a period of fifty days, or for such other period that the Court may deem appropriate, because of the following circumstances:

1. On January 5, 1981, petitioner's counsel obtained a copy of a newly published biographical book entitled "THE LAST MAFIOSO—The Treacherous World of Jimmy Fratianno" by Ovid Demaris (Times Books, 1981) ("the

Fratianno book"). Two copies of the Fratianno book have been lodged with the Clerk of the Court and a copy has been furnished to respondent.

2. The Fratianno book is the life history of Jimmy Fratianno as told to Ovid Demaris; Fratianno is a self-acknowledged former member of the Mafia or "La Cosa Nostra" and is the same Jimmy Fratianno named in the LOOK article that is the subject of respondent Joseph L. Alioto's complaint for alleged libel in this cause. Fratianno now is in the Witness Protection Program of the Justice Department and has testified on behalf of the Government in obtaining the convictions of 18 organized crime defendants in five separate trials.*

3. Part IV of the Fratianno book (pp. 137-160) is entitled "MY FRIEND, JOE." It discloses, for the first time to petitioner's knowledge, Fratianno's account of his meetings, dealings and friendship with respondent Alioto. Fratianno's account is in direct conflict with

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* In addition to the Government's vouching for Fratianno's credibility in the criminal trials in which he has testified thus far, Ovid Demaris states in his "Author's Note" at the beginning of the Fratianno book (viii):

> I warned him [Fratianno] at the outset that if I caught him in a single lie, I would walk out and burn the tapes. His response was, "Ovid, forget about it. My life's in your hands." The way Jimmy saw it, his only chance of escaping the vengeance of the Mafia bosses who wanted him dead in the worst way was for the book to earn enough money for him to leave the country, taking with him his wife, step-daughter, and divorced mother-in-law. He understood that one lie could lead to the book being discredited and that was the last thing he wanted in this world.
>
> The government had also issued its warning. One lie and all plea bargains were off, which meant that he would spend the remainder of his life behind bars, or could even face the death penalty for two murders in Cleveland and one in San Diego.

respondent Alioto's testimony in the trial court in several critical respects:

> *According to Fratianno*, he was first introduced to Alioto by Angelo Marino, a "caporegime" in the San Jose "family" of the Mafia and a close friend of Alioto. (Fratianno book 138-139.) Thereafter, Fratianno made a regular practice of "dropping by" Alioto's office without appointments to talk with Alioto whenever his business took him to San Francisco. (*Id.* 141-142.) On one visit Fratianno brought Jack Goldberger of the Teamsters Union to Alioto's office and introduced him to Alioto, at Alioto's request, in order to persuade Goldberger to cause Teamsters' pension money to be deposited in Alioto's First San Francisco Bank. (*Id.* 142-143.) Fratianno also brought Frank Bompensiero, a San Diego Mafia gangster, to Alioto's office and introduced him; Fratianno was "pleased at how quickly the two men warmed up to each other." (*Id.* 143.) Alioto later offered to provide financing of $2.3 million to enable Fratianno and Frank LaPorte, a Chicago Mafia leader, to acquire controlling interest in the Crystal Bay Casino in Lake Tahoe, Nevada. (*Id.* 148, 150-151.)
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> *According to Alioto*, he met Fratianno *only once*, when Jack Goldberger brought Fratianno to Alioto's office and introduced him. Alioto also testified that he had never heard of Frank Bompensiero or Frank LaPorte.

4. Pursuant to Rule 27(b), F.R. Civ. P., petitioner has filed a motion in the District Court in this cause for leave to take the deposition of Jimmy Fratianno, based on the passages from the Fratianno book that are in conflict with Alioto's trial testimony. In the event the motion is allowed, petitioner estimates that a period of at least thirty days will be required to serve a subpoena upon and take the deposition of Fratianno. The deposition when transcribed and filed will be the predicate for

a motion either in this Court or the District Court, seeking whatever further proceedings appear necessary to do justice and protect the petitioner's rights in this action.

5. In the event the Court has decided to grant the Petition for Writ of Certiorari, petitioner requests that this motion be treated as withdrawn.

Respectfully submitted,

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